

# Powers to act on behalf of others

## For people who need help managing their health or other parts of their life

People sometimes need help to manage their health, property or other parts of their life. This might be because they're physically ill or disabled, mentally ill, intellectually disabled or have a head injury. Their incapacity may be temporary or permanent. There are three ways to make sure a person is looked after if they can't fully look after themselves or communicate their decisions:

- the person can grant another person enduring power of attorney (EPA) to look after their personal affairs or property in case they become unable to manage their own affairs
- the person or another person can ask the Family Court to appoint someone to act for them as a welfare guardian or property manager
- the person or another person can also ask the Family Court to make a one-off Personal Order.

The Court will try to not intervene in the person's life more than necessary.

The Court can also be asked to review decisions made by people who have the power to act on the behalf of other people, such as an EPA issue.

### Enduring power of attorney

An EPA is a legal document that says who can take care of your personal or financial matters if you can't. That person is called your attorney.

You can set up an EPA through a lawyer or trustee corporation. You don't need to go through the Family Court, but the Court can get involved if any issues need to be sorted out.

### Types of EPA applications

The Court can be asked:

- for directions (for example, about accounts to be kept by the attorney or who will pay the expenses of the attorney)
- to take some action in respect of an EPA (for example, to decide whether a person is suitable to act as an attorney, or give permission for the attorney to make a will for the person the EPA is for)
- to review an attorney's decision.

### Welfare guardian

The Family Court can appoint a welfare guardian for anyone 18 years or older. A welfare guardian can also be appointed for a 16-year-old or 17-year-old if:

- the person is or has been married, in a civil union or de facto relationship; or
- the person has no living parents or guardians; or
- no parent or guardian is in regular contact with the person and the Court thinks a welfare guardian would help them.

Welfare guardians can also be appointed if other kinds of Personal Orders aren't carried out, for example, an order to give someone specified medical treatment.

### What a welfare guardian can and can't do

When making and carrying out decisions on behalf of a person, a welfare guardian must:

- support and protect the welfare and best interests of the person they're acting for
- encourage the person to develop and use their skills
- encourage the person to act in their own interest wherever possible
- help the person be part of the community, as much as possible
- talk with the person, and other people who are interested in and able to advise on the personal care and welfare of that person, including any voluntary welfare agency
- consult with the property manager if the person has a Property Order.

A welfare guardian can't:

- make a decision about a marriage or civil union (including separation/divorce) for the person they're helping
- decide about the adoption of any child of the person
- stop the person getting any standard medical treatment or procedure intended to save the person's life or to prevent serious damage to the person's health
- allow the person to have electroconvulsive treatment (this used to be called electroshock therapy)
- agree to any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing the person's behaviour
- allow that person to take part in any medical experiment other than one conducted to save the person's life or to prevent serious damage to their health.

## Property Order

If you think you need help making decisions about property or income, or you think someone else does, you can ask the Family Court to get someone to look after it. You have two options:

- If a person's income or benefit is less than \$20,000 a year and none of the property to be managed is worth more than \$5000, you can ask the Court for an Order to Administer Property.
- If the property or income is worth more than this, instead of applying for an Order to Administer Property, you can apply to have a property manager appointed.

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### Order to Administer Property

The person the order is for must either:

- be completely or partly unable to understand what the decision is about or to understand what could happen as a result of a decision about their property, or
- have these abilities but be unable to make decisions or communicate how they want their property managed.

The Court can only make an Order to Administer Property for people who usually live in New Zealand and are at least 18 years old. Personal Orders for 16-year-olds and 17-year-olds can be made if they are or have been married, in a civil union or de facto relationship.

The Court won't make an order for a person who has granted someone an EPA unless it's not working to protect their best interests or it doesn't cover a specific decision that's needed.

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### Have a property manager appointed

If someone can't fully manage their property and financial affairs, the Court can appoint a property manager. When making and carrying out decisions, property managers must:

- support and protect the person's interests
- encourage the person to develop and use any skills they have to manage their own property
- talk with the person they are acting for, and other people who are interested in the person's welfare
- regularly talk with any welfare guardian of the person
- follow the terms of any Personal Order made for the person they're acting for.

## Personal Order

If someone can't fully make personal decisions for themselves or is unable to communicate these decisions, the Court can say, by creating a Personal Order, that specific actions must be taken for the person who needs help.

A Personal Order may cover things like decisions involving medical treatment or putting someone in a rest home.

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### Who can apply for a Personal Order

You can apply if you're:

- unable to make decisions about your own care
- a relative or attorney of the person who can't fully make decisions about their own care
- a social worker employed under the Oranga Tamariki Act 1989
- a medical practitioner or doctor
- a representative of any non-profit group that provides services and facilities for the welfare of people covered by the Protection of Personal and Property Rights Act 1988
- the superintendent, licensee, supervisor or person in charge, if the person is a patient or a resident of a hospital, rest home or residential disability care facility
- the manager of a person's property if the person is subject to a property order
- any other person with the Court's permission.

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### Ask for a review of an order

You can ask the Family Court to review:

- Personal Orders
- Orders appointing a property manager
- Orders for administering property
- Orders appointing a welfare guardian.

At a review the Court can:

- change or refuse to change an order
- end or refuse to end an order
- extend the period of a Personal Order or Order appointing a Welfare Guardian (the Court must also set a date for review more than three years but not more than five years from the date of the new order)
- extend an Order to Appoint a Property Manager (the Court must set another date for review that is not later than three years after the date of the new order).

For more information, go to [justice.govt.nz/family/powers-to-make-decisions/](https://justice.govt.nz/family/powers-to-make-decisions/)